No. 08-878

In the Supreme Court of the United States

GABRIEL CRUZ-GARCIA, PETITIONER

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

In 1996, Congress repealed Section 212(c) of the Immigration and Nationality Act, 8 U.S.C. 1182(c) (1994), which provided for a discretionary waiver of deportation, and replaced it with another form of discretionary relief not available to aliens convicted of certain crimes, including aggravated felonies and controlled-substance offenses. In *INS* v. *St. Cyr*, 533 U.S. 289 (2001), this Court held that the repeal of Section 212(c) did not apply retroactively to an alien previously convicted of an aggravated felony through a plea agreement at a time when the conviction would not have rendered the alien ineligible for discretionary relief. The questions presented are:

1. Whether this Court's holding in *St. Cyr* applies to an alien who was convicted of a controlled-substance offense after trial, and who therefore did not relinquish his right to a trial in reliance on potential eligibility for a waiver under Section 212(c).

2. Whether, for purposes of the retroactive availability of relief under former Section 212(c), it violates the equal protection component of the Due Process Clause to distinguish between an alien who is removable on the basis of a conviction that followed a guilty plea and one whose conviction occurred after a jury trial.

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1-2) is not published in the *Federal Reporter* but is reprinted in 285 Fed. Appx. 446. The orders of the Board of Immigration Appeals (Pet. App. 3-4) and the immigration judge (Pet. App. 5-8) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 11, 2008. A petition for rehearing was denied on November 20, 2008 (Pet. App. 9). The petition for a writ of certiorari was filed on January 2, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Former Section 212(c) of the Immigration and Nationality Act of 1952 (INA), 8 U.S.C. 1182(c) (1988)

(repealed 1996), authorized some permanent resident aliens domiciled in the United States for seven consecutive years to apply for discretionary relief from exclusion. While, by its terms, Section 212(c) applied only to exclusion proceedings, it was generally construed as being applicable in both deportation and exclusion proceedings. See *INS* v. *St. Cyr*, 533 U.S. 289, 295 (2001).

In 1996, in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, § 440(d), 110 Stat. 1277, Congress amended Section 212(c) to make ineligible for discretionary relief aliens previously convicted of certain criminal offenses, including controlled-substance offenses. See *St. Cyr*, 533 U.S. at 297 n.7. Later that year, in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, § 304(b), 110 Stat. 3009-597, Congress repealed Section 212(c) in its entirety, and replaced it with Section 240A of the INA, 8 U.S.C. 1229b, which now provides for a form of discretionary relief known as cancellation of removal that is not available to many criminal aliens, including those who have been convicted of an aggravated felony (which, as relevant to this case, includes a drug-trafficking crime). See 8 U.S.C. 1101(a)(43)(B), 1229b(a)(3); see also *St. Cyr*, 533 U.S. at 297.

In *St. Cyr*, this Court held, based on principles of non-retroactivity, that IIRIRA's repeal of Section 212(c) should not be construed to apply to an alien convicted of an aggravated felony through a plea agreement at a time when the conviction would not have rendered the alien ineligible for relief under Section 212(c). 533 U.S. at 314-326. In particular, the Court in *St. Cyr* explained that, before 1996, aliens who decided "to forgo their right to a trial" by pleading guilty to an aggravated fel-

ony "almost certainly relied" on the chance tnat, notwithstanding their convictions, they would still have some "likelihood of receiving § 212(c) relief" from deportation. *Id.* at 325.

On September 28, 2004, after notice-and-comment rulemaking proceedings, the Department of Justice promulgated regulations to take account of the *St. Cyr* decision. See *Section 212(c) Relief for Aliens with Certain Criminal Convictions Before April 1, 1997*, 69 Fed. Reg. 57,826 (2004). In its response to comments received on its proposed rule, the Department noted cases holding that "an alien who is convicted after trial is not eligible for [S]ection 212(c) relief under *St. Cyr*," and then stated that it "has determined to retain the distinction between ineligible aliens who were convicted after criminal trials[] and those convicted through plea agreements." *Id.* at 57,828. That determination is reflected in the regulations, which make aliens ineligible to apply for relief under former Section 212(c) "with respect to convictions entered after trial." 8 C.F.R. 1212.3(h).

2. Petitioner is a native of Mexico who was admitted to the United States for lawful permanent residence in 1976. Pet. App. 6; Admin. R. 78, 117 (A.R.). On October 26, 1979, after a trial at which petitioner pleaded not guilty, a jury in the United States District Court for the Southern District of California found petitioner guilty of three counts of unlawful distribution of cocaine, in violation of 21 U.S.C. 841(a)(1). Pet. App. 6; A.R. 96, 117. Petitioner was sentenced to a fifteen-year term of imprisonment; all but 179 days of the sentence was suspended, and he was placed on probation for five years. A.R. 96.

On January 25, 2005, the Department of Homeland Security commenced immigration proceedings against

petitioner, charging him with being removable in light of his conviction for distribution of a controlled substance. A.R. 117-118; see 8 U.S.C. 1227(a)(2)(B)(i). Petitioner sought a waiver of removal under former Section 212(c). Pet. App. 6. On August 1, 2005, after a hearing, the immigration judge pretermitted petitioner's application for a waiver because, unlike the alien in *St. Cyr*, petitioner had gone to trial on his drug offense rather than pleading guilty. *Id.* at 6-7 (discussing *St. Cyr*, *supra*; *Armendariz-Montoya* v. *Sonchik*, 291 F.3d 1116, 1121-1122 (9th Cir. 2002), cert. denied, 539 U.S. 902 (2003); and "[t]he regulations adopted by the Attorney General * * * to implement the *St. Cyr* decision").

On August 4, 2006, the Board of Immigration Appeals (BIA) affirmed the immigration judge's decision and dismissed petitioner's appeal concerning his eligibility for relief from removal. Pet. App. 3-4 (citing *St. Cyr*, *supra*; *Armendariz-Montoya*, *supra*; and *Kelava* v. *Gonzales*, 434 F.3d 1120, 1124-1125 (9th Cir.), cert. denied, 549 U.S. 810 (2006)).

3. The court of appeals denied petitioner's petition for review of the BIA's decision in a brief, unpublished, per curiam opinion dated July 11, 2008. Pet. App. 1-2. The court held that petitioner's arguments were foreclosed by *Armendariz-Montoya*, *supra*, which had concluded that aliens who "pleaded not guilty and elected a jury trial . . . [are] barred from seeking § 212(c) relief." Pet. App. 2 (quoting *Armendariz-Montoya*, 291 F.3d at 1122). The court further rejected petitioner's argument that it violates equal protection to make such a distinction for purposes of the retroactive availability of relief under Section 212(c) between aliens whose convictions came after trial and those whose convictions came after a guilty plea. *Ibid.* On November 20, 2008,

the court of appeals denied petitioner's request for rehearing en banc. *Id.* at 9.

ARGUMENT

1. Petitioner's first asserted ground for certiorari (Pet. 14-17) is that the Ninth Circuit created a circuit split and called a federal regulation into question by deciding that relief under former Section 212(c) does not have to be made available to aliens in deportation (as opposed to exclusion) proceedings. But the court of appeals did not make any such ruling in petitioner's case. That issue was neither pressed nor passed upon in the court below, and it is unrelated to the retroactivity question that actually was decided by the court of appeals in this case. That alone is sufficient reason to deny petitioner's request that the Court consider that distinct issue. See, *e.g.*, *United States* v. *United Foods, Inc.*, 533 U.S. 405, 417 (2001); *Glover* v. *United States*, 531 U.S. 198, 205 (2001).

Moreover, the decision petitioner complains about on this score—*Abebe* v. *Mukasey*, 554 F.3d 1203 (9th Cir. 2009) (en banc)—is still pending before the Ninth Circuit on a petition for rehearing. See *id.* at 1204 (noting that "[t]he petition for rehearing remains pending" and inviting a response from the government). The government filed a response (opposing further rehearing) on February 25, 2009. Accordingly, any consideration bythis Court of the separate issue decided in *Abebe* would be especially premature.[1]

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[1] Petitioner contends that the decision in *Abebe* "calls into question the constitutionality of a federal regulation." Pet. 14 (capitalization modified); see also Pet. 6. After the petition for a writ of certiorari in this case was filed, however, the Ninth Circuit issued a revised opinion

2. Petitioner next contends (Pet. 17-26) that *INS* v. *St. Cyr*, 533 U.S. 289 (2001), which involved aliens convicted of an aggravated felony after a plea agreement, has been misinterpreted by the majority of the courts of appeals and that the retroactive availability of Section 212(c) relief should be extended to aliens who were found guilty of a deportable offense after a jury trial, because retroactivity analysis should not include a reliance requirement. In the alternative, he contends (Pet. 27-34) that any reliance requirement would be satisfied by objectively reasonable reliance, which could be shown by conduct other than a guilty plea. The unpublished decision of the court of appeals does not warrant further review, because petitioner's arguments lack merit. The courts of appeals have correctly recognized that reliance is a significant factor to be considered for purposes of retroactivity analysis, although it may be given different weight in different circuits and there is variation about whether it must be actual or objectively reasonable reliance. Furthermore, the underlying question involves the retroactive effect of a statutory repeal that occurred more than 12 years ago, and this Court has denied petitions urging a similar extension of *St. Cyr* in a number of prior cases. See, *e.g.*, *Aguilar* v. *Mukasey*, 128 S. Ct. 2961 (2008); *Zamora* v. *Mukasey*, 128 S. Ct. 2051 (2008); *Hernandez-Castillo* v. *Gonzales*, 549 U.S. 810 (2006); *Thom* v. *Gonzales*, 546 U.S. 828 (2005); *Stephens* v. *Ashcroft*, 543 U.S. 1124 (2005); *Reyes* v. *McElroy*, 543 U.S. 1057 (2005); *Armendariz-Montoya* v. *Sonchik*, 539 U.S. 902 (2003).

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in *Abebe*, which specifically stated that it did not "cast[] any doubt on the regulation" to which petitioner refers. 554 F.3d at 1207.

a. Petitioner's argument (Pet. 17-26) that the decision below conflicts with this Court's retroactivity analysis by considering whether petitioner relied on Section 212(c) before it was repealed lacks merit. As this Court has explained, in determining whether a statute has a retroactive effect, a court must make a "commonsense, functional judgment" that "should be informed and guided by 'familiar considerations of fair notice, reasonable reliance, and settled expectations.'" *Martin* v. *Hadix*, 527 U.S. 343, 357-358 (1999) (quoting *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 270 (1994)).

In *St. Cyr* itself, this Court placed considerable emphasis on the fact that "[p]lea agreements involve a *quid pro quo*," whereby, "[i]n exchange for some perceived benefit, defendants waive several of their constitutional rights (including the right to a trial) and grant the government numerous tangible benefits." 533 U.S. at 321-322 (citation and internal quotation marks omitted). In light of "the frequency with which § 212(c) relief was granted in the years leading up to AEDPA and IIRIRA," the Court concluded that "preserving the possibility of such relief would have been one of the principal benefits sought by defendants deciding whether to accept a plea offer or instead to proceed to trial." *Id.* at 323. And because, in the Court's view, aliens in St. Cyr's position "almost certainly relied upon th[e] likelihood [of receiving § 212(c) relief] in deciding whether to forgo their right to a trial," the Court held that "the elimination of any possibility of § 212(c) relief by IIRIRA has an obvious and severe retroactive effect." *Id.* at 325.

In asserting that the court of appeals misinterpreted *St. Cyr*, petitioner principally relies (Pet. 17-26) on three of this Court's retroactivity cases: *Landgraf*, *supra*; *Hughes Aircraft Co.* v. *United States ex rel. Schumer*,

520 U.S. 939 (1997); and *Martin*, *supra*. Not only did *Landgraf* and *Martin* both specifically mention "reasonable reliance," *Martin*, 527 U.S. at 358; *Landgraf*, 511 U.S. at 270, but all three of petitioner's cases predated this Court's decision in *Fernandez-Vargas* v. *Gonzales*, 548 U.S. 30 (2006), which explicitly discussed *St. Cyr* and confirmed the importance of reliance in its analysis. In *Fernandez-Vargas*, the Court stated that *St. Cyr* "emphasized that plea agreements involve a *quid pro quo* * * * in which a waiver of constitutional rights * * * had been exchanged for a perceived benefit * * * valued in light of the possible discretionary relief, a focus of expectation and reliance." *Id.* at 43-44 (internal quotation marks omitted). Distinguishing the situation of the alien in *Fernandez-Vargas* from that of the alien in *St. Cyr*, the Court remarked that, "before IIRIRA's effective date Fernandez-Vargas never availed himself of [provisions providing for discretionary relief] or took action that enhanced their significance to him in particular, as St. Cyr did in making his *quid pro quo* agreement." *Id.* at 44 n.10.

Thus, the court of appeals did not err in considering reasonable reliance as part of its "commonsense, functional" judgment about retroactivity. *Martin*, 527 U.S. at 357.

b. Petitioner contends (Pet. 5-6) that there is a conflict among the circuits as to the availability of Section 212(c) relief to aliens convicted of crimes prior to the enactment of AEDPA and IIRIRA. The disagreement is quite narrow, however. Nine circuits have declined to extend the holding of *St. Cyr* generally to aliens convicted after going to trial rather than pleading guilty. See *Dias* v. *INS*, 311 F.3d 456, 458 (1st Cir. 2002), cert. denied, 539 U.S. 926 (2003); *Rankine* v. *Reno*, 319 F.3d

93, 102 (2d Cir.), cert. denied, 540 U.S. 910 (2003); *Mbea* v. *Gonzales*, 482 F.3d 276, 281-282 (4th Cir. 2007); *Hernandez-Castillo* v. *Moore*, 436 F.3d 516, 520 (5th Cir.), cert. denied, 549 U.S. 810 (2006); *United States* v. *Zuñiga-Guerrero*, 460 F.3d 733, 737-739 (6th Cir. 2006), cert. denied, 549 U.S. 1145 (2007); *United States* v. *De Horta Garcia*, 519 F.3d 658, 661 (7th Cir.), cert. denied, 129 S. Ct. 489 (2008); *Hernandez de Anderson* v. *Gonzales*, 497 F.3d 927, 940 (9th Cir. 2007); *Hem* v. *Maurer*, 458 F.3d 1185, 1189 (10th Cir. 2006); *Ferguson* v. *United States Att'y Gen.*, No. 08-10806, 2009 WL 824434 (11th Cir. Mar. 31, 2009).[2] Only the Third Circuit has held that no showing of reliance is required and that new legal consequences attached by IIRIRA to an alien's conviction were sufficient to prevent the BIA from precluding Section 212(c) relief. See *Atkinson* v. *Attorney Gen.*, 479 F.3d 222, 231 (2007).[3] Retreating from dictum in

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[2] Petitioner cites (Pet. 5) *Thaqi* v. *Jenifer*, 377 F.3d 500 (6th Cir. 2004), but that court's discussion of reliance (*id.* at 504 n.2) was dictum in light of its holding that applying AEDPA retroactively to the alien there would be impermissibly retroactive in light of his guilty plea (*id.* at 503-504). Petitioner also cites (Pet. 5) *Brooks* v. *Ashcroft*, 283 F.3d 1268 (11th Cir. 2002), but the court there found that it had no jurisdiction to address the alien's argument about statutory retroactivity. *Id.* at 1274 n.6.

[3] Petitioner cites (Pet. 5) the Fourth Circuit's decision in *Olatunji* v. *Ashcroft*, 387 F.3d 383 (2004), as rejecting a reliance requirement for retroactivity analysis. The retroactivity issue in *Olatunji*, however, involved the loss of an alien's ability to take brief trips abroad without subjecting himself to removal proceedings, *id.* at 395-396, rather than the loss of access to Section 212(c) relief. *Olatunji* itself distinguished the Fourth Circuit's prior decision in *Chambers* v. *Reno*, 307 F.3d 284 (2002), which involved Section 212(c). See *Olatunji*, 387 F.3d at 392 (discussing *Chambers*, 307 F.3d at 293). Even after *Olatunji*, the Fourth Circuit has—directly contrary to petitioner's argument—continued to hold that "IIRIRA's repeal of § 212(c) did not produce an im-

Ponnapula v. *Ashcroft*, 373 F.3d 480 (3d Cir. 2004), which had suggested that an alien who had not been offered a guilty plea would be unable to establish reliance for purposes of retroactivity analysis, *id.* at 494, the court in *Atkinson* expressly addressed "the situation of aliens who, like Atkinson, had not been offered pleas and who had been convicted of aggravated felonies following a jury trial at a time when that conviction would not have rendered them ineligible for [S]ection 212(c) relief."[4] 479 F.3d at 229-230.

Petitioner does not, however, mention the *Atkinson* court's acknowledgment that Atkinson might be precluded from relief under Section 212(c) because he had not acquired seven years of unrelinquished, lawful permanent residence in the United States when he committed an aggravated felony. See 479 F.3d at 230 n.7. Petitioner himself would fail under such a standard because, unlike the alien in *St. Cyr*, he had been a lawful permanent resident for only three years at the time of his conviction, A.R. 78, 117—far less than the seven-year minimum required for eligibility under Section 212(c). Cf. *Jurado-Delgado* v. *Attorney Gen. of the United States*, No. 06-4495, 2009 WL 90850, at *10 (3d Cir. Jan. 15, 2009) (Sloviter, J., concurring) (concluding that an alien's "right to § 212(c) relief had not vested" because he "had not established seven years of continuous presence at the time of his commission of the offenses leading to" the convictions that rendered him ineligible for cancellation of removal). Accordingly, even if the issue

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permissibly retroactive effect as applied to an alien convicted after trial." *Mbea*, 482 F.3d at 281.

[4] Petitioner here concedes (Pet. 11 n.3) that the record does not indicate "whether [he] was offered a plea agreement."

here otherwise warranted review, which it does not, this case would not be a suitable vehicle for its consideration.

c. Petitioner's alternative argument (Pet. 28-34)—that he could establish objectively reasonable reliance in accordance with decisions from the Second, Ninth, and Tenth Circuits—is unpersuasive. His circumstances are different from those of the alien in the Tenth Circuit's decision in *Hem*, because Hem made an objectively reasonable decision to forgo a right to an appeal that would have put him "at risk of being sentenced to a sentence longer than 5 years * * * making him ineligible for § 212(c) relief."[5] 458 F.3d at 1199. For similar reasons, petitioner's case is also materially different from that of the alien in the Ninth Circuit's decision in *Hernandez de Anderson*, who had taken the affirmative step of bringing "herself—and her criminal conviction—to the INS's attention by applying for naturalization," and who had, in doing so, relied upon the potential availability of suspension of deportation by waiting to apply for naturalization until she had accrued the ten years of continuous residence that made her eligible for such relief. 497 F.3d at 936-937, 941-943. Petitioner points to no affirmative act he committed in reliance on the availability of Section 212(c) before its repeal.[6]

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[5] Petitioner would not have been exposed to any such risk at the time he would have made any decision about appealing his 1979 conviction, because the five-year-imprisonment ceiling was not added to Section 212(c) until 1990. See Immigration Act of 1990, Pub. L. No. 101-649, § 511, 104 Stat. 5052.

[6] Of course, to the extent that petitioner relies upon disagreement between the Ninth Circuit's decision in this case and its earlier decision in *Hernandez de Anderson*, this Court does not sit to resolve intra-circuit disputes. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

Presumably for that reason, petitioner stresses (Pet. 32-33) the Second Circuit's decision in *Restrepo*, which remanded an alien's habeas petition to the district court to allow him to attempt to show that he had made a "choice to forgo filing an affirmative application [for Section 212(c) relief] in the hope of building a stronger record and filing at a later date." *Restrepo* v. *McElroy*, 369 F.3d 627, 637, 638-639 (2004).[7] Although petitioner correctly notes that *Restrepo* did not "definitively decide whether that [form of] reliance must be actual or reasonable," Pet. 33, he omits to mention that the Second Circuit has since held that any alien seeking to benefit from the argument that he "delayed filing an affirmative § 212(c) application to build a stronger case * * * must make *an individualized showing* of reliance." *Wilson* v. *Gonzales*, 471 F.3d 111, 122 (2d Cir. 2006) (emphasis added); see also *Carranza-de Salinas* v. *Gonzales*, 477 F.3d 200, 210 (5th Cir. 2007) (following *Wilson* and remanding to the BIA to allow an alien to "demonstrate * * * that she affirmatively decided to postpone her § 212(c) application to increase her likelihood of relief"). Petitioner does not cite any case that found such a showing had been made, and he does not even attempt to make any individualized showing. To the contrary, he merely suggests (Pet. 33) that "it is reasonable to presume" that he failed to apply for Section 212(c) relief before IIRIRA was enacted because he was attempting "to accumulate greater equities over time."

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[7] On remand in *Restrepo*, the district court denied the alien's habeas petition without addressing whether he had made (or objectively could have made) a considered choice to wait to file a Section 212(c) application, because he was statutorily ineligible for Section 212(c) relief on other grounds. See *Restrepo* v. *McElroy*, 354 F. Supp. 2d 254, 259 (E.D.N.Y. 2005).

Even assuming that reliance in the form of purposeful waiting could be shown on the basis of an objective rather than a subjective standard, the 17-year period between petitioner's conviction and the repeal of Section 212(c) is much longer than the comparable periods in cases that contemplated the possibility of a viable claim of reliance. See *Carranza-de Salinas*, 477 F.3d at 202 (less than 38 months between conviction and IIRIRA's enactment); *Wilson*, 471 F.3d at 113 (less than 42 months between last conviction and IIRIRA's enactment); *Restrepo*, 354 F. Supp. 2d at 255 (less than 51 months between sentencing and AEDPA's enactment). Indeed, given petitioner's failure to act during those 17 years—or even during the additional six months between IIRIRA's enactment and the effective date of its repeal of Section 212(c), see IIRIRA § 309(a), 110 Stat. 3009-625—it is most reasonable to conclude that petitioner had no intention whatsoever of applying for Section 212(c) relief, but was instead simply hoping that the government would not try to remove him on account of his conviction on three counts of drug trafficking.

3. Petitioner also contends (Pet. 34-36) that the court of appeals' decision violates the equal protection component of the Due Process Clause because it "creates an irrational distinction" between two groups of aliens he claims are "similarly situated": those who were convicted before AEDPA and IIRIRA as a result of pleading guilty, and those who were convicted before AEDPA and IIRIRA as a result of a trial. Pet. 35.

Petitioner does not suggest that there is any disagreement among the courts of appeals on that question. In fact, one case he cites (Pet. 5) for a different proposition expressly rejected an equal protection claim about IIRIRA's retroactive repeal of Section 212(c) on the

ground that there is "a rational basis in differentiating between a defendant who pleads guilty versus a defendant who goes to trial." *Brooks* v. *Ashcroft*, 283 F.3d 1268, 1274 (11th Cir. 2002).

Moreover, the court of appeals correctly rejected petitioner's equal protection argument, because he was not similarly situated with aliens the court found to be eligible for Section 212(c) relief. See *Caban* v. *Mohammed*, 441 U.S. 380, 398 (1979); *Dillingham* v. *INS*, 267 F.3d 996, 1007 (9th Cir. 2001). Petitioner is not similarly situated *vis-à-vis* an alien in deportation proceedings commenced before AEDPA and IIRIRA, because that person applied for a waiver before Section 212(c) was repealed by IIRIRA, and before AEDPA's limitations on discretionary relief were effective. Nor is he similarly situated *vis-à-vis* an alien in later-initiated removal proceedings who surrendered an important legal right by pleading guilty in presumptive reliance upon existing eligibility under the law at the time. As this Court has previously recognized, the "protection of reasonable reliance interests" is sufficient to survive equal protection review even under the heightened scrutiny used for equal protection challenges to gender-based classifications. *Heckler* v. *Mathews*, 465 U.S. 728, 746 (1984). It follows *a fortiori* that reliance can provide the basis for a legitimate distinction in the immigration context.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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